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Fundamental standards of humanity

Report of the Secretary-General submitted pursuant to Commission resolution 1999/65

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Introduction

1. In its resolution 1999/65, entitled "Fundamental standards of humanity", the Commission on Human Rights recognized the desirability of identifying fundamental standards of humanity applicable in all situations in a manner consistent with international law, including the Charter of the United Nations and requested the Secretary-General to continue to study and consult on that issue and to submit a report at its fifty-sixth session. To that end, the Commission invited Governments, United Nations bodies, the human rights treaty bodies, regional organizations, the International Committee of the Red Cross and non-governmental organizations, to provide comments on the reports submitted by the Secretary-General at its fifty-fourth and fifty-fifth sessions, documents E/CN.4/1998/87 and Add.1 and E/CN.4/1999/92 respectively.

2. Substantive comments were received from the Governments of the following States: Denmark, Finland, Iceland, Norway, Sweden, in the form of a joint Nordic response, Poland, Switzerland and Turkey. Information was also received from the International Committee of the Red Cross (ICRC) and the following non-governmental organizations: Association for World Education, Azerbaijan Women and Development Centre, Help Age International, Institute of Inter-Balkan Relations, International Council of Jewish Women, International Federation of Rural Adult Catholic Movements, International Institute of Humanitarian Law, International Movement of Apostolate in the Independent Social Milieus, International Office for Catholic Education, Kowani (Federation of voluntary women organizations - Indonesia), National Women's Council of Catalonia, Pax Christi International and Working Women's Forum (India). The responses received are reflected in the present report.

General comments

3. A number of responses received included comments of a general nature on situations that may lead to tension, possible means to avoid tension from erupting into conflict and the value of fundamental standards of humanity.

4. The International Institute for Humanitarian Law emphasized that preventive action focused on preventing that tension from developing into situations of internal violence should be taken into consideration, and the role of the United Nations in this regard needed to be underlined. A further framework for this exercise was the need to define the law, the principles and rules of the Charter of the United Nations and the practice of the United Nations, especially with regard to peace-keeping and peace-enforcement operations. The International Office for Catholic Education mentioned that in order to avoid conflict between two States or violence within the borders of a State, an international body should have the power to intervene to assist the persons threatened and to play a mediating role. Should it not be possible to avoid conflict, then the perpetrators of the crimes committed must be brought to justice. According to the Azerbaijan Women and Development Centre, it was important to ensure a peace based on justice and to accelerate peace negotiations between warring parties, and that the nature of armed conflicts be clearly identified and recognized and that the corresponding international conventions, laws and regulations be implemented. The Working Women's Forum highlighted that cross-border migration, a by-product of unemployment and landlessness, resulted in the worst forms of racism leading to ethnic and armed conflicts.

5. The Nordic countries reiterated that the most serious human rights violations of today were among the root causes of conflicts. They included aggression, ethnic cleansing and displacement of people, harassment and discrimination. Unless the inherent dignity of all human rights could be recognized, there could be no freedom, justice or peace. Help Age International pointed to the need to consider older persons as a specific category in descriptions of human rights abuses in situations of internal violence. Internal conflict had an impact on elderly populations in terms of displacement, abandonment, refugee flows and camps, revenge killings, crime, special medical, dietary and social needs due to age, special needs due to caring for young dependants and the loss of or separation from family or others on whom they depended. Additionally, older people often stayed voluntarily or by force in the conflict zone when younger civilians left it, leaving them in a very vulnerable and unprotected state.

6. The Republic of Turkey stressed that international terrorism was a gross violation of human rights which necessitated all States taking necessary and effective measures in conformity with relevant international law to prevent, combat and eliminate terrorism. It was difficult to develop a law on fundamental standards of humanity since that would imply that it was only legally binding on States parties, while non-State actors, including armed groups targeting civilians, continued to elude responsibility. The Republic of Turkey considered that progress with respect to fundamental standards of humanity could thus only be achieved on the basis of international human rights standards and fundamental principles of international law, as well as the principles of the "Martens clause", which provided for the protection of the human person under the "principles of humanity" and the "dictates of the public conscience". The Institute of Inter-Balkan Relations, on the other hand, suggested that fundamental standards of humanity be elaborated in the form of an international convention on the basis of provisions contained in existing human rights and international law, to be binding on all States parties.

Desirability of identifying fundamental standards of humanity

7. The Nordic countries and Poland, in their responses, agreed that there was a need to address any lack of protection of persons in situations of internal violence, which fell outside the scope of common article 3 of the four Geneva Conventions and of Additional Protocol II thereto, and when effective implementation of human rights might be limited by derogations in exceptional circumstances. In this connection, Poland, Switzerland and the National Women's Council of Catalonia stated that fundamental standards were intended to ensure the effective protection of human beings in all situations, especially during situations of internal violence when some of the most horrible atrocities are committed, both by Governments and by non-State actors. Such standards would avoid the lengthy debates on the definition of armed conflicts, the threshold of applicability of humanitarian law, and the legality under international law of derogations from human rights obligations. In order to address that lack of protection of persons in situations of internal violence, of which five major situations had been identified, it would be useful to identify and draw upon international human rights, refugee and humanitarian law, applicable at all times, to all circumstances and to all actors, both governmental and non-governmental, as well as any individual. With regard to the latter, Poland drew attention to the concept of duties of entities other than Governments, as reflected in article 29 of the Universal Declaration of Human Rights.

8. According to the Nordic countries, Poland, Switzerland, the International Federation of Rural Adult Catholic Movements, Help Age International, the International Council of Jewish Women and Kowani the main issue for consideration was, therefore, the necessity and desirability of identifying principles or standards for protection of the human person in every situation which would reflect both human rights and humanitarian law and be applicable to all parties to the conflict. Help Age International specified that the basic economic, social and cultural rights, the right to development and civil and political rights, regardless of age, gender, ethnic, political and religious background and culture should be drawn together as fundamental standards. Help Age International and the Azerbaijan Women and Development Centre stated that the standards should aim both to promote and protect the rights of all people at all stages, namely, pre-conflict, conflict and post-conflict situations.

9. The International Committee of the Red Cross (ICRC) suggested that further work on fundamental standards of humanity would benefit from clarification of their desired content, purpose and status. The first issue regarding content related to the question of whether an attempt to merge norms of international humanitarian law and human rights law was the way forward. ICRC expressed concern that such a merger would risk confusing two distinct, albeit complementary, areas of the law to the detriment of the legal obligations contained in each. Fundamental standards of humanity must not be used to dilute the obligations of parties to international or non-international armed conflicts provided both in treaty and in customary law. Similarly, the current ambit of protection provided for in human rights law must be preserved rather than limited by an elaboration of a list of fundamental standards. According to ICRC, the second issue that needed to be resolved was whether the drafting of fundamental standards of humanity would be the best way to address the problem. An answer could not be provided before a more detailed analysis was undertaken of different types of situations of international violence, as well as of the causes of violations of existing legal rules and the practical problems encountered in applying those rules.

10. The third issue raised by ICRC concerned the proposal of the Secretary-General that "further analysis would be needed to identify the extent to which the human rights abuses which are most prevalent in situations of internal violence can be attributed to the proper and faithful application of derogation clauses set out in international treaties". ICRC believe that such an analysis should examine the feasibility of strengthening mechanisms of international supervision of derogations and the impact that might have on enhancing human rights protection in situations of internal violence. ICRC also concurred with the Secretary-General that further examination of the international accountability of non-State armed groups and of the appropriateness of fundamental standards of humanity as a means of holding them accountable would be useful. Any such analysis would have to be based on new developments in international law such as the jurisprudence of the two ad hoc criminal tribunals for the former Yugoslavia and Rwanda and the likely impact of the recently adopted treaty establishing the International Criminal Court. The primary question that should be answered was whether existing and future mechanisms of international criminal responsibility obviated the need for an elaboration of "fundamental standards of humanity", given that non-State actors could be held criminally responsible for violations of international humanitarian law and human rights crimes.

11. The fourth issue arising with respect to fundamental standards of humanity was the extent to which such standards would overlap with rules of customary international law. The

latter were especially relevant in situations where States had not ratified the relevant international human rights instruments or international humanitarian law treaties. The ICRC study on customary rules of international humanitarian law applicable in international and non-international armed conflicts, mentioned in both of the Secretary-General's reports, would be finalized in the spring of 2000 and published later in the year. Initial results gave rise to the following conclusions. First, there were more rules of customary international law relating to non-international armed conflict than originally expected. The second observation was that there were some areas where practice was unclear or too varied to find a rule of customary international law. The third conclusion was that other areas of international law, such as human rights law, had had a remarkable influence on rules of humanitarian law. ICRC reiterated its readiness to share the results of the study and contribute to an assessment of the interrelationship between fundamental standards of humanity and customary law norms applicable in non-international armed conflict upon completion of the study.

12. ICRC expressed its belief that the intended legal status of fundamental standards of humanity also needed to be determined before further substantive work on identifying the relevant norms was pursued. It would not be the preference of ICRC to create a legally binding document or one that aimed at standard-setting. ICRC suggested that the next phase of discussion should be aimed at determining what was actually needed and what would give an added benefit to the existing situation. Careful consideration should, in particular, be given to whether an articulation of norms was useful or whether attention should be devoted to analysing difficulties in the implementation of existing law, with a view to suggesting useful remedies.

Purposes of fundamental standards of humanity

13. ICRC suggested that many purposes could be envisaged: a document meant to facilitate the dissemination of the relevant norms, an instrument aimed at clarifying the substance of international humanitarian law applicable in non-international armed conflict, a text aimed at clarifying the responsibility of non-State actors, or a document aimed at bridging the gap (if one existed) between international humanitarian law and human rights law in situations of internal violence. ICRC believed that work on fundamental standards of humanity should be continued only after a decision on the purpose of the standards was reached. The contents of fundamental standards of humanity and their status would obviously vary depending on whether they were meant to serve as a dissemination or standard-setting tool.

Sources and methods for identifying fundamental standards of humanity

14. The International Council of Jewish Women mentioned that it was important for the United Nations to identify fundamental standards of humanity rapidly. There existed a sufficient body of international law, studies of the United Nations and the jurisprudence of the international courts making accountability a legal reality, to enable action to be taken to elaborate fundamental standards.

15. A number of responses suggested sources from which fundamental standards of humanity could be drawn. Poland suggested that fundamental standards reflected rules already contained in existing instruments, as well as customary international law. They would thus consist of a reaffirmation of contemporary international law but also contain aspects of their progressive

development. As a set of standards which were politically neutral and motivated by purely humanitarian considerations, the catalogue of fundamental standards might not be expected to politicize the debate.

16. Switzerland stated that one of the most important sources for identifying fundamental standards of humanity was the Statute of the International Criminal Court which, in articles 6, 7 and 8, covered crimes of genocide, crimes against humanity and war crimes. They were applicable at all times, during peace, internal violence and war, and criminalized acts perpetrated by individuals or members of a group that were previously considered by their very nature to be the responsibility of the State officials or those acting with their consent or acquiescence.

17. A further possible source for identifying fundamental standards of humanity related to the draft general comment on article 4 of the International Covenant on Civil and Political Rights on non-derogable rights. In that way the Human Rights Committee might extend the list of non-derogable rights, in particular in the light of the obligations of States parties under international law and the principle of non-discrimination provided for in article 4, paragraph 1 of that Covenant. Furthermore, many human rights treaties did not provide for derogations, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Slavery Convention. Switzerland mentioned that it would be interesting to note the conclusions of the Committee regarding that legal situation and the inference of the Committee regarding the fact that certain substantive provisions of the Covenant were not subject to reservations (General Comment No. 24).

18. A third possible source for the identification of fundamental standards of humanity related to conventional norms (in particular common article 3 to the four Geneva Conventions and Additional Protocol II thereto) and customary international humanitarian law. The ICRC study on customary international humanitarian law should extend the practical scope of application of the norms mentioned above. (See the response of ICRC in paragraph 11 above.) The fourth possible source for identifying fundamental standards related to the Guiding Principles on Internal Displacement which drew together norms of international human rights, humanitarian and refugee law applicable in all circumstances. (For further details, see the report of the Special Representative of the Secretary-General entitled "Internally Displaced Persons" (A/54/409).)

19. As for additional sources for identifying fundamental standards, the International Institute of Humanitarian Law suggested the application of the Martens clause to refugees adopted in 1989, the rules of combat applicable in non-international armed conflicts adopted in 1990, the Turku Declaration adopted in 1990 and the Guiding Principles on the Right to Humanitarian Assistance of 1993. In addition, possible sources could include the various rules of refugee law, in particular the principle of non-refoulement, the rights of children and women, the rules and principles concerning the wounded and sick, as well as rights and principles regarding terrorism and ethnic cleansing.

20. The National Women's Council of Catalonia drew attention to the need to include in fundamental standards of humanity specific protection of women, who were particularly

vulnerable in situations of internal violence. That could be based on the International Convention on the Elimination of All Forms of Discrimination against Women, as well as the Beijing Declaration and Platform for Action, especially with regard to the systematic nature of discrimination against women. Help Age International proposed adding a reference to the rights and principles adopted by the United Nations concerning older persons with regard to their independence, dignity, care, self-fulfilment and participation. Reference should also be made to older persons' role in society and their rights to life, basic needs and development.

21. Switzerland proposed that the method for the identification of standards be based on that adopted with regard to the Guiding Principles on Internal Displacement. By compiling and analysing the norms reflected in international human rights, refugee and humanitarian law, a global framework of fundamental standards could be elaborated, protecting the individual at all times and in all circumstances. It could, for example, be undertaken on the basis of deduction by comparing the rights afforded in times of peace, non-derogable rights covered by article 4 of the International Covenant on Civil and Political Rights and those reflected in common article 3 to the four Geneva Conventions and Additional Protocol II thereto. Once identified, fundamental standards, similarly to the Guiding Principles on Internal Displacement, could be presented in an accessible and concise format.

22. Help Age International believed it was important that the United Nations endorse and apply the principles of participation and inclusion of affected groups when drawing up the standards.

Content of fundamental standards of humanity

23. According to Turkey, the content of fundamental standards of humanity should be limited to international human rights law and not include international humanitarian law, as they concerned situations of internal violence which did not reach the threshold of an armed conflict.

24. With regard to the content of fundamental standards of humanity, the International Institute of Humanitarian Law emphasized that they should not be limited to the elaboration of a form of code of crimes, but should also highlight the positive measures to be taken in order to achieve respect for the standards. For example, in international humanitarian law, not only was the right to life proclaimed, but a series of other measures were prescribed to guarantee respect for it. Besides explicit prohibition of killing, specific rules concerning precautionary measures in military operations to avoid attacks on life were prescribed. The same applied to the prohibition of torture and inhuman acts which also contributed to saving human life. Specialized services established in order to contribute to protecting human life included medical and civil defence services, as well as special legal mechanisms to ensure respect for the rules of humanitarian law. Lastly, the development of a system of rules pertaining to humanitarian assistance ensured the provision of relief, which more than any other mechanism helped to save and protect human lives. The affirmation of the independence of humanitarian action (based on impartiality, humanity and neutrality) from daily political considerations and its concentration on alleviating the suffering of the victims should be emphasized.

25. Some responses received provided an indication as to the possible elements composing fundamental standards of humanity. The International Institute for Humanitarian Law suggested

including collective measures of punishment, taking of hostages, disappearances, mass forcible displacement and pillage. The Association for World Education suggested that fundamental standards cover the right to life, the right to property and the prohibition of torture, and that the list of crimes reflected in the Statute of the International Criminal Court be supplemented with broader human rights law as set out by the treaty bodies and in General Assembly resolutions and various declarations. The International Office for Catholic Education suggested that fundamental standards of humanity also include the right to life and personal integrity, the right to dignity and the right to freedom of movement. Pax Christi International proposed including a reference to the rights of refugees, the Guiding Principles on Internal Displacement and the protection of persons with irregular status. The Working Women's Forum proposed that the rights of women be included, especially with regard to rape, dowry deaths, domestic violence and sexual harassment. The Azerbaijan Women and Development Centre drew attention to the need for the protection of women, children, the aged and disabled persons.

Recommendations for further development

26. A number of responses received pointed to specific activities or suggestions for the further development of fundamental standards of humanity.

27. Sweden mentioned plans to host an expert meeting in cooperation with the other Nordic countries on fundamental standards of humanity in February 2000. The objective of the meeting would be to clarify and define why fundamental standards of humanity needed to be identified the most important purpose of which is to enhance the protection of all persons. Fundamental standards of humanity could also be useful for education and training purposes. A second objective of the expert meeting would be to discuss the issue of fundamental standards of humanity in the light of developments, which had taken place over the previous 10 years. They included the adoption last year of the Statute of the International Criminal Court, the draft general comment on article 4 of the International Covenant on Civil and Political Rights, currently being considered by the Human Rights Committee, concerning derogations from certain human rights obligations in exceptional circumstances, the CIRCA study on customary rules of international humanitarian law, and the establishment of the International Criminal Tribunals for the former Yugoslavia and Rwanda regarding international legal accountability of non-State actors. Sweden mentioned that it would be pleased to report on the outcome of the expert meeting to the Commission on Human Rights at its fifty-sixth session.

28. The International Institute for Humanitarian Law suggested that further action could include the elaboration of certain conventions, as a supplement to existing ones, and the drawing up of guidelines for the behaviour of all actors. Help Age International stressed that the participation of affected groups in the identification of standards was critical in view of the importance of assisting each individual to absorb and apply fundamental standards of humanity. Help Age International further recommended that increased resources be directed towards the collection, publication and use of data which could illustrate the violation of fundamental standards of humanity. Publications and publicity could be undertaken in a variety of ways, including through the Internet and the electronic media, music and the arts. To that end, a special information and education programme on fundamental standards of humanity could be launched as a millennium project linking affected groups and interested institutions.

29. Poland suggested that further steps be envisaged, such as the establishment of a working group to identify a catalogue of fundamental standards. To that end, Poland attached great importance to the further promotion of fundamental standards of humanity within the Commission on Human Rights and subsequently the General Assembly. Guided by the spirit of the universal protection of all human beings, the United Nations should give priority to the adoption of a "Universal Declaration of Fundamental Standards of Humanity".

30. The International Office for Catholic Education suggested that once elaborated, fundamental standards of humanity should be widely published and disseminated among all sectors of the population. Kowani mentioned that dissemination, education and training in the area of human rights and humanitarian law of the public in general as well as the armed forces was essential. Switzerland added that fundamental standards of humanity could be disseminated and used as an educational tool with a view to their practical application in the field. The International Movement of Apostolate in the Independent Social Milieus emphasized that fundamental standards of humanity should be integrated into national legislation and taught widely.

31. The Association for World Education proposed that the study of fundamental standards of humanity be entrusted to the United Nations University or a law school, followed by the holding of a seminar of government representatives, NGOs and legal scholars to discuss the issue further.

32. Lastly, Switzerland suggested that the High Commissioner for Human Rights organize, before the fifty-sixth session of the Commission on Human Rights, an informal information meeting on fundamental standards for representatives of States, and international and non-governmental organizations.